



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB5904

by Rep. Will Guzzardi

SYNOPSIS AS INTRODUCED:

5 ILCS 140/11

from Ch. 116, par. 211

Amends the Freedom of Information Act. Provides that if a person seeking the right to inspect or receive a copy of a public record prevails in a proceeding under the Act (instead of the Section concerning the filing of an action in court), the court shall award the person reasonable attorney's fees and costs. Provides that, for the purpose of awarding attorney's fees and costs under the Act, a requester prevails if he or she obtains relief through (i) a voluntary or unilateral change in position by the public body after suit has been filed, unless the public body can demonstrate that its voluntary or unilateral change was not caused by the filing of litigation, (ii) an enforceable written agreement or consent decree, or (iii) a judicial order. Effective immediately.

LRB099 18981 HEP 43370 b

1 AN ACT concerning government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Freedom of Information Act is amended by
5 changing Section 11 as follows:

6 (5 ILCS 140/11) (from Ch. 116, par. 211)

7 Sec. 11. (a) Any person denied access to inspect or copy
8 any public record by a public body may file suit for injunctive
9 or declaratory relief.

10 (b) Where the denial is from a public body of the State,
11 suit may be filed in the circuit court for the county where the
12 public body has its principal office or where the person denied
13 access resides.

14 (c) Where the denial is from a municipality or other public
15 body, except as provided in subsection (b) of this Section,
16 suit may be filed in the circuit court for the county where the
17 public body is located.

18 (d) The circuit court shall have the jurisdiction to enjoin
19 the public body from withholding public records and to order
20 the production of any public records improperly withheld from
21 the person seeking access. If the public body can show that
22 exceptional circumstances exist, and that the body is
23 exercising due diligence in responding to the request, the

1 court may retain jurisdiction and allow the agency additional
2 time to complete its review of the records.

3 (e) On motion of the plaintiff, prior to or after in camera
4 inspection, the court shall order the public body to provide an
5 index of the records to which access has been denied. The index
6 shall include the following:

7 (i) A description of the nature or contents of each
8 document withheld, or each deletion from a released
9 document, provided, however, that the public body shall not
10 be required to disclose the information which it asserts is
11 exempt; and

12 (ii) A statement of the exemption or exemptions claimed
13 for each such deletion or withheld document.

14 (f) In any action considered by the court, the court shall
15 consider the matter de novo, and shall conduct such in camera
16 examination of the requested records as it finds appropriate to
17 determine if such records or any part thereof may be withheld
18 under any provision of this Act. The burden shall be on the
19 public body to establish that its refusal to permit public
20 inspection or copying is in accordance with the provisions of
21 this Act. Any public body that asserts that a record is exempt
22 from disclosure has the burden of proving that it is exempt by
23 clear and convincing evidence.

24 (g) In the event of noncompliance with an order of the
25 court to disclose, the court may enforce its order against any
26 public official or employee so ordered or primarily responsible

1 for such noncompliance through the court's contempt powers.

2 (h) Except as to causes the court considers to be of
3 greater importance, proceedings arising under this Section
4 shall take precedence on the docket over all other causes and
5 be assigned for hearing and trial at the earliest practicable
6 date and expedited in every way.

7 (i) If a person seeking the right to inspect or receive a
8 copy of a public record prevails in a proceeding under this Act
9 ~~Section~~, the court shall award such person reasonable
10 attorney's ~~attorneys'~~ fees and costs. In determining what
11 amount of attorney's fees is reasonable, the court shall
12 consider the degree to which the relief obtained relates to the
13 relief sought. The changes contained in this subsection made by
14 Public Act 96-542 apply to an action filed on or after January
15 1, 2010 (the effective date of Public Act 96-542) ~~this~~
16 ~~amendatory Act of the 96th General Assembly.~~

17 For the purposes of this subsection, a requester prevails
18 if he or she obtains relief through (i) a voluntary or
19 unilateral change in position by the public body after suit has
20 been filed, unless the public body can demonstrate that its
21 voluntary or unilateral change was not caused by the filing of
22 litigation under this Section, (ii) an enforceable written
23 agreement or consent decree, or (iii) a judicial order.

24 (j) If the court determines that a public body willfully
25 and intentionally failed to comply with this Act, or otherwise
26 acted in bad faith, the court shall also impose upon the public

1 body a civil penalty of not less than \$2,500 nor more than
2 \$5,000 for each occurrence. In assessing the civil penalty, the
3 court shall consider in aggravation or mitigation the budget of
4 the public body and whether the public body has previously been
5 assessed penalties for violations of this Act. The changes
6 contained in this subsection apply to an action filed on or
7 after January 1, 2010 (the effective date of Public Act 96-542)
8 ~~this amendatory Act of the 96th General Assembly.~~

9 (Source: P.A. 96-542, eff. 1-1-10; 97-813, eff. 7-13-12;
10 revised 10-14-15.)

11 Section 99. Effective date. This Act takes effect upon
12 becoming law.